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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,447	02/18/2004	Kosta Ilic	5150-82100	3468
7590 Jeffrey C. Hood Meyertons, Hood, Kivlin, Kowert & Goetzel PC P.O. Box 398 Austin, TX 78767	05/17/2007		EXAMINER BHAT, ADITYA S	
			ART UNIT 2863	PAPER NUMBER
			MAIL DATE 05/17/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/781,447	ILIC ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Aditya S. Bhat	2863	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 20 February 2007.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-21 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 18 January 2005 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

1. With regards to claims 1-21 the methods and systems recited in the claimed invention do not produce a real life, real world, useful, concrete, and tangible result.

The claimed invention as a whole must accomplish a practical application. That is, it must produce a "useful, concrete and tangible result." State Street, 149 F.3d at 1373, 47 USPQ2d at 1601-02. The purpose of this requirement is to limit patent protection to inventions that possess a certain level of "real world" value, as opposed to subject matter that represents nothing more than an idea or concept, or is simply a starting point for future investigation or research (Brenner v. Manson, 383 U.S. 519, 528-36, 148 USPQ 689, 693-96); In re Ziegler, 992, F.2d 1197, 1200-03, 26 USPQ2d 1600, 1603-06 (Fed. Cir. 1993)).

A process that consists solely of the manipulation of an abstract idea is not concrete or tangible. See In re Warmerdam, 33 F.3d 1354, 1360, 31 USPQ2d 1754, 1759 (Fed. Cir. 1994). See also Schrader, 22 F.3d at 295, 30 USPQ2d at 1459. Nor can one patent "a novel and useful mathematical formula," Flook, 437 U.S. at 585, 198 USPQ at 195; electromagnetism or steam power, O'Reilly v. Morse, 56 U.S. (15 How.) 62, 113-114 (1853);

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Please view the following guidelines to overcome 35 U.S.C. 101 rejection made in this office action.

<http://www.uspto.gov/web/offices/com/sol/og/2005/week47/patgupa.htm>

2. Claim 21 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The claims are drawn to a computer program per se. A computer program per se are abstract instructions. Therefore, a computer program is not a physical thing (product) nor a process as they are not "acts" being performed. As such, these claims are not directed to one of the statutory categories of invention (See MPEP 2106.01), but are directed to nonstatutory functional descriptive material.

It is noted that computer programs embodied on a computer readable medium or other structure, which would permit the functionality of the program to be realized, would be directed to a product and be within a statutory category of invention, so long as the computer readable medium is not disclosed as non-statutory subject matter per se (signals or carrier waves).

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

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only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1 and 21 are rejected under 35 U.S.C. 102(e) as being anticipated by Conway et al. (USPUB 2004/0064750)

With regards to claim 1, Conway et al. (USPUB 2004/0064750) teaches a memory medium that stores program instructions implementing an application programming interface (API) for synchronizing multiple devices in a system, wherein the API comprises:

a plurality of functions invocable in a program to synchronize a plurality of devices, wherein each function is executable to perform a respective functionality related to synchronizing the plurality of devices, and wherein at least one of the plurality of functions is executable to access a plurality of instrument drivers corresponding respectively to the plurality of devices to synchronize the plurality of devices; (pages 1, paragraph 0007-0009)

wherein, in synchronizing the plurality of devices, the plurality of functions are executable to:

determine a trigger clock signal for each of the plurality of devices; (pages 2, paragraph 0016) and

synchronize the plurality of devices based on the determined trigger clock signals. (pages 2, paragraph 0016)

With regards to claim 21, Conway et al. (USPUB 2004/0064750) teaches a method of synchronizing a multiple devices in a system, the method comprising: including one or more function calls in a program in accordance with an application

programming interface (API) for synchronizing multiple devices in the system, wherein the API comprises a plurality of functions invocable in a program to synchronize a plurality of devices, wherein each function is executable to perform a respective functionality related to synchronizing the plurality of devices, and wherein at least one of the plurality of functions is executable to access a plurality of instrument drivers corresponding respectively to the plurality of devices to synchronize the plurality of devices; (pages 1, paragraph 0007-0009) and

executing the program, including executing the one or more function calls to invoke one or more of the plurality of functions to synchronize the plurality of devices by:

determining a trigger clock signal for each of the plurality of devices; (pages 2, paragraph 0016) and

synchronizing the plurality of devices based on the determined trigger clock signals. (pages 2, paragraph 0016)

***Response to Arguments***

4. Applicant's arguments filed 2/20/2007 have been fully considered but they are not persuasive.

Applicant is reminded that during patent examination, the pending claims must be "given the broadest reasonable interpretation consistent with the specification." Applicant always has the opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. *In re Prater*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969).

While the meaning of claims of issued patents are interpreted in light of the specification, prosecution history, prior art and other claims, this is not the mode of claim interpretation to be applied during examination. During examination, the claims must be interpreted as broadly as their terms reasonably allowed. This means that the words of the claim must be given their plain meaning unless applicant has provided a clear definition in the specification. *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989).

In this instance applicant argues that the prior art of record does not teach a application programming interface. Page 1, Paragraphs 007-009 of the Conway reference. Applicant also argues that the 101 rejection is improper since the claimed invention produces a useful, concrete and tangible result: In response the rejection is deemed proper since the claim language does not clearly illustrate what the real world practical application/use is. While it is understood that the applicant is synchronizing multiple devices in a system, it is not clear what that system is. For the aforementioned reasons the rejection is deemed proper.

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kim (USPUB 2004/0034491) teaches a clock synchronization apparatus and method of device with different clocks.
6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aditya S. Bhat whose telephone number is 571-272-2270. The examiner can normally be reached on M-F 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Barlow can be reached on 571-272-2269. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

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USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Aditya Bhat  
May 10, 2007

BRYAN BUI  
PRIMARY EXAMINER



A handwritten signature in black ink, appearing to read "BRYAN BUI". Below the signature, the date "5/14/07" is written in a smaller, cursive hand.